

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>April 11, 2011</u>
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:
MOHAMED SESAY,	:
	:
Plaintiff,	:
-against-	:
	:
INTERNAL REVENUE SERVICE,	:
	:
Defendant.	:
-----X	:

10 Civ. 361 (PAC) (JCF)

ORDER ADOPTING R&R

HONORABLE PAUL A. CROTTY, United States District Judge:

*Pro se* plaintiff Mohamed Sesay (“Sesay” or “Plaintiff”) initiated this action against the Internal Revenue Service (“IRS”) on February 23, 2009, alleging that the IRS had erroneously denied payment of his 2005 tax refund of \$4,400. On January 15, 2010 Judge Preska granted Sesay’s request to proceed *in forma pauperis* and directed him to submit an amended complaint within 60 days. Sesay filed such an amended complaint on March 29, 2010. On August 2, 2010, the IRS issued a payment to Sesay of \$5,702.76, which included the requested refund and \$1,302.76 in interest. On September 29, 2010, the IRS filed this motion, asserting that the Court now lacks jurisdiction over this case because the August 2, 2010 payment rendered the case moot. Sesay did not reply to the instant motion.

On February 2, 2011, Magistrate Judge Francis filed his Report and Recommendation (“R&R”) that the case be dismissed (1) because the payment by the IRS rendered the case moot and (2) because Plaintiff bears the burden of establishing jurisdiction, and Sesay did not affirmatively establish jurisdiction by responding to the instant motion to dismiss. No objections

to the R&R have been filed. Accordingly, the Court adopts Magistrate Judge Francis's R&R in its entirety and GRANTS the motion to dismiss.

### **DISCUSSION**

In reviewing a report and recommendation, a Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y.1985) (citations omitted).

Magistrate Judge Francis found that because the IRS paid Sesay in full, Sesay no longer has a "legally cognizable interest in the outcome" or a "continuing personal interest or injury that could be redressed by this Court." (R&R 4.) As a result, Magistrate Judge Francis found that the case has been rendered moot. (R&R 4) See City of Erie v. Pap's A.M., 529 U.S. 277, 287 (2000). Since federal courts may only adjudicate live cases or controversies, see Lewis v. Continental Bank Corp., 494 U.S. 472, 477-78 (1990), Magistrate Judge Francis correctly found that this Court no longer has jurisdiction over this dispute. (R&R 4.) Additionally, because Sesay never responded to the instant motion, he did not fulfill his obligation to affirmatively establish jurisdiction. (R&R 4-5.) See Jackson v. New York State Department of Labor, 709 F. Supp. 2d 218, 223 (S.D.N.Y. 2010).

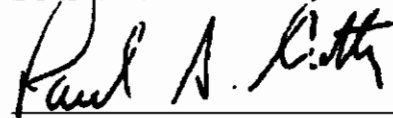
### **CONCLUSION**

There is no clear error in Magistrate Judge Francis's analysis, and the Court adopts the R&R in its entirety. The motion to dismiss is, therefore, GRANTED. The Clerk of Court is

directed to enter judgment and close this case. Pursuant to 28 U.S.C § 1915(a), I find that any appeal from this order would not be taken in good faith.

Dated: New York, New York  
April 11, 2011

SO ORDERED

A handwritten signature in black ink, appearing to read "Paul A. Crotty", written over a horizontal line.

PAUL A. CROTTY  
United States District Judge

Copy mailed to:

Mohamed Sesay  
1056 Findlay Avenue  
Apt. #8  
Bronx, New York 10456

Amy A. Barcelo, Esq.  
Assistant United States Attorney  
86 Chambers Street  
New York, New York 10007